

ARTICLE 14. DRINKING WATER STATE REVOLVING LOAN FUND**RULE 1. PURPOSE****327 IAC 14-1-1 ----- Purpose**

The purpose of this article is to implement the drinking water state revolving fund established by IC 13-18-21 and accomplish the following:

- (1) Provide funding for loans and other financial assistance to or for the benefit of political subdivisions, including forgiveness of principal if allowed under federal law.
- (2) Provide political subdivisions in Indiana funding for the planning, designing, construction, renovation, improvement, or expansion of public water systems (PWS) that will facilitate compliance with national primary drinking water regulations applicable to PWS under the federal Safe Drinking Water Act (SDWA) or otherwise significantly further the health protection objectives of the federal SDWA and other activities necessary or convenient to complete these tasks.
- (3) Pay the cost of administering the fund and the program, except as provided in the federal SDWA.
- (4) Conduct any other activity permitted by the SDWA.

[As added at: 22 IR 38.]

RULE 2. DEFINITIONS**327 IAC 14-2-1 ----- Definitions: applicability**

The definitions in this rule apply throughout this article.

[As added at: 22 IR 38.]

327 IAC 14-2-2 ----- Definitions: “agency” defined

“Agency” means the budget agency created under IC 4-12-1-3.

[As added at: 22 IR 38.]

327 IAC 14-2-3 ----- Definitions: “authorized representative” defined

“Authorized representative” means a person who has been designated by the governing board of a political subdivision to sign documents on behalf of that board.

[As added at: 22 IR 38.]

327 IAC 14-2-4 ----- Definitions: “best management practice” defined

“Best management practice” means a practice or combination of practices that have been determined to be the most effective and practicable means of preventing or reducing water pollution to a level compatible with water quality goals.

[As added at: 22 IR 38.]

327 IAC 14-2-5 ----- Definitions: “board” defined

“Board” means the governing body of the political subdivision seeking financial assistance.

[As added at: 22 IR 38.]

327 IAC 14-2-6 ----- Definitions: “bond” defined

“Bond” is the debt instrument that evidences the long term financing undertaken by a political subdivision in accordance with Indiana statutes for incurring debt.

[As added at: 22 IR 38.]

327 IAC 14-2-7 ----- Definitions: “commissioner” defined

“Commissioner” means the commissioner of the department of environmental management.

[As added at: 22 IR 39.]

327 IAC 14-2-8 ----- Definitions: “department” defined

“Department” means the Indiana department of environmental management created under IC 13-13-1-1.

[As added at: 22 IR 39.]

327 IAC 14-2-9 ----- Definitions: “drinking water SRF” defined

“Drinking water SRF” means the drinking water state revolving fund as authorized by the Safe Drinking Water Act, 42 U.S.C. 1452 et seq., and IC 13-18-21*.

*The Safe Drinking Water Act may be found at 42 U.S.C. 1452 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

[As added at: 22 IR 39.]

327 IAC 14-2-10 ---- Definitions: “due diligence” defined

“Due diligence” means a process that provides financial disclosures advising the state of economic matters related to the political subdivision and their ability to repay the loan.

[As added at: 22 IR 39.]

327 IAC 14-2-11 ---- Definitions: “EA” defined

“EA” means an environmental assessment that is a document prepared by the department upon completion of a review of a preliminary engineering report that:

- (1) describes the PWS project alternatives;
- (2) describes the potential environmental impacts of the feasible alternatives;
- (3) acts as a public record of the documentation and review process used to arrive at a preliminary decision as to whether an EIS is necessary; and
- (4) provides information adequate for the public to comment on the proposed project.

[As added at: 22 IR 39.]

327 IAC 14-2-12 ---- Definitions: “EIS” defined

“EIS” means an environmental impact statement that is a document prepared if it is determined by the department that the construction or operation, or both, of a proposed PWS project will result in significant environmental impacts. The purpose, content, and format of an EIS shall be in accordance with 327 IAC 11-2-3(b)(1) through 327 IAC 11-2-3(b)(2). The preparation of an EIS shall be the responsibility of the department.

[As added at: 22 IR 39.]

327 IAC 14-2-13 ---- Definitions: “financial assistance” defined

“Financial assistance” means the types of financial assistance authorized by the Safe Drinking Water Act.

[As added at: 22 IR 39.]

327 IAC 14-2-14 ---- Definitions: “financial assistance agreement” defined

“Financial assistance agreement” means a contract document approved under IC 4-13-2-14.1 that contains the covenants between the political subdivision and agency concerning financial assistance from the drinking water SRF.

[As added at: 22 IR 39.]

327 IAC 14-2-15 ---- Definitions: “financial assistance closing” defined

“Financial assistance closing” means the occasion in which a political subdivision tenders its note, bond, guaranty agreement, or credit enhancement agreement to the agency, and the agency provides a portion, or all, of the drinking water SRF financial assistance to the political subdivision.

[As added at: 22 IR 39.]

327 IAC 14-2-16 ---- Definitions: “FNSET” defined

“FNSET” means a finding of no significant environmental impact that is a finding of the department, issued with an EA, that the construction and operation of a proposed PWS will not significantly impact the environment.

[As added at: 22 IR 39.]

327 IAC 14-2-17 ---- Definitions: “IUP” defined

“IUP” means an intended use plan identifying the intended uses of the drinking water SRF and describing how those uses support the goals of the program.

[As added at: 22 IR 40.]

327 IAC 14-2-18 ---- Definitions: “loan” defined

“Loan” means purchasing the notes or bonds of a political subdivision to finance a PWS or refinancing an existing debt obligation where debt was incurred after July 1, 1993.

[As added at: 22 IR 40.]

327 IAC 14-2-19 ---- Definitions: “operation and maintenance” defined

“Operation and maintenance” includes the activities required to assure the continuing dependable and economic function of the PWS, including maintaining compliance with primary and secondary drinking water standards, as follows:

- (1) Operation is the control and management of the unit processes and equipment that make up the PWS. This includes financial and personnel management, records, reporting, laboratory control, process control, safety and emergency operation planning, and operating activities.
- (2) Maintenance is the preservation of the functional integrity and efficiency of equipment and structures by implementing systems of preventive and corrective maintenance.

[As added at: 22 IR 40.]

327 IAC 14-2-20 ---- Definitions: “political subdivision” defined

“Political subdivision” means the following:

- (1) Political subdivision as defined in IC 36-1-2.
- (2) Regional water, sewage, or solid waste district organized under IC 13-26 or IC 13-3-2, before its repeal July 1, 1996.
- (3) Local public improvement bond bank organized under IC 5-1.4.
- (4) Qualified entity described in IC 5-1.5-1-8(4) that is a public water utility described in IC 8-1-2-125.
- (5) Conservancy district established for the purpose set forth in IC 14-33-1-1(a)(4).

[As added at: 22 IR 40.]

327 IAC 14-2-21 ---- Definitions: “PPL” defined

“PPL” means a project list which is generated through the department and updated annually and amended quarterly. It ranks, in descending priority of need, political subdivisions which have indicated a need for a PWS construction project.

[As added at: 22 IR 40.]

327 IAC 14-2-22 ---- Definitions: “preliminary engineering report” defined

“Preliminary engineering report” means the document submitted by the political subdivision that provides the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed PWS construction project.

[As added at: 22 IR 40.]

327 IAC 14-2-23 ---- Definitions: “program” defined

“Program” means the drinking water state revolving loan fund established by IC 13-18-21.

[As added at: 22 IR 40.]

327 IAC 14-2-24 ---- Definitions: “project” defined

“Project” means the activities or tasks the department identifies in the preliminary engineering report for which the political subdivision may commit and expend funds.

[As added at: 22 IR 40.]

327 IAC 14-2-25 ---- Definitions: “PWS” defined

“PWS” means a public water system as described in 327 IAC 8-2-1(49).

[As added at: 22 IR 40.]

327 IAC 14-2-26 ---- Definitions: “ROD” defined

“ROD” means a statement issued by the department upon the completion of an EIS, which includes a determination of whether to proceed with a proposed project.

[As added at: 22 IR 40.]

327 IAC 14-2-27 ---- Definitions: “Safe Drinking Water Act” defined

“Safe Drinking Water Act” means the federal act as amended by the Safe Drinking Water Act Amendments of 1986, the Lead Contamination Control Act of 1988, and the Safe Drinking Water Act Amendments of 1996*.

*The Safe Drinking Water Act may be found at 42 U.S.C. 300f to 300j-26 and is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Management, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana 46206.

[As added at: 22 IR 41.]

327 IAC 14-2-28 ---- Definitions: “substantial completion of construction” defined

“Substantial completion of construction” means the date determined by the department when all but minor components of a project have been built, all equipment is operational, and the project is capable of functioning as designed.

[As added at: 22 IR 41.]

327 IAC 14-2-29 ---- Definitions: “substantive environmental impact” defined

“Substantive environmental impact” means a significant adverse change in the environment resulting directly or indirectly from the construction, operation, upgrade, or expansion of a PWS construction project.

[As added at: 22 IR 41.]

327 IAC 14-2-30 ---- Definitions: “supplemental fund” defined

“Supplemental fund” means the supplemental drinking water assistance fund established by IC 13-18-21-22.

[As added at: 22 IR 41.]

327 IAC 14-2-31 ---- Definitions: “supplemental program” defined

“Supplemental program” means the supplemental drinking water assistance program established by IC 13-18-21-21.

[As added at: 22 IR 41.]

RULE 3. USES OF THE DRINKING WATER STATE REVOLVING FUND**327 IAC 14-3-1 ----- Uses: drinking water SRF program expenditures**

The drinking water SRF shall be used to do the following:

- (1) Provide financial assistance for PWS construction projects and all other activities that are permitted by the Safe Drinking Water Act.
- (2) Refinance outstanding indebtedness of political subdivisions eligible for repurchase by the agency under the Safe Drinking Water Act.
- (3) Pay reasonable direct and indirect program administration costs.

[As added at: 22 IR 41.]

RULE 4. CRITERIA FOR DETERMINING FINANCIAL ASSISTANCE ELIGIBILITY**327 IAC 14-4-1 ----- Criteria: project priority list**

The agency shall award drinking water SRF financial assistance for PWS construction projects to a political subdivision only for eligible costs of projects listed on the department’s project priority list PPL.

[As added at: 22 IR 41.]

327 IAC 14-4-2 ----- Criteria: intended use plan

(a) The department and the agency shall prepare annually an IUP, including a project priority list pursuant to the Safe Drinking Water Act, to be effective on the first day of the state’s fiscal year.

(b) The following documents shall be included as appendices of the IUP and are subject to modification in accordance with this section:

- (1) The PPL.
- (2) A document describing the project ranking process.
- (3) A list of any other types of project permitted by the Safe Drinking Water Act.

(c) The department shall adopt an IUP after holding a public meeting on the plan and responding to substantial comments received. The department shall amend the IUP to add eligible projects, and change or amend listed projects as necessary on a quarterly basis after pursuing a public notification process.

(d) Placement in the PPL shall be based on the following criteria:

- (1) The project must be consistent with the uses of the drinking water SRF as identified in the SDWA and IC 13-18-21-3.
- (2) A political subdivision must submit general project information on an application form provided by the department that is signed by the political subdivision’s authorized representative and includes relevant information as follows:
 - (A) A general description of the project.
 - (B) An appropriate cost estimate for different phases of the project.
 - (C) An estimated initiation date and completion date for each phase of the project.

[As added at: 22 IR 41.]

RULE 5. PROGRAM STANDARDS**327 IAC 14-5-1 ----- Program standards: criteria**

Loans and other available SRF financial assistance for PWS construction projects shall be made only to a political subdivision that meets all of the following criteria:

- (1) Owns, operates, and maintains, or causes to be operated and maintained, a PWS for its useful life.
- (2) Demonstrates financial, managerial, technical, and legal capability to meet the terms of the financial assistance agreement and to operate and maintain the PWS for its useful life.
- (3) Agrees to submit an annual operating budget for the agency's approval and periodically adjust fees, charges, taxes, special assessments, and revenues available to the political subdivision, if any, in order to assure receipt of sufficient revenue annually to comply with all requirements of the loan agreement.
- (4) Agrees to:
 - (A) maintain financial records in accordance with generally accepted government accounting principles for utilities; and
 - (B) provide a copy of audits of the PWS financial records as conducted by the state board of accounts or other certified independent auditor during the term of the financial assistance.
- (5) Agrees to allow inspection by the agency of the financial records related to the PWS during the term of the financial assistance agreement.
- (6) Meets all other drinking water SRF program requirements.

[As added at: 22 IR 42.]

RULE 6. DUE DILIGENCE**327 IAC 14-6-1 ----- Due diligence: process**

The due diligence process shall include the following tasks:

- (1) The political subdivision shall submit a completed due diligence form issued or authorized by the agency with the required documentation.
- (2) The agency shall:
 - (A) review or cause to be reviewed the due diligence form and documentation; and
 - (B) inform the political subdivision, in writing, of the determination.

[As added at: 22 IR 42.]

RULE 7. PRELIMINARY ENGINEERING REPORT**327 IAC 14-7-1 ----- Preliminary engineering report: purpose**

It is the purpose of this rule to establish the preliminary engineering procedures required for funding of PWS construction projects from the drinking water SRF. The preliminary engineering report shall provide the information necessary for the department to determine the technical, economic, and environmental adequacy of the proposed PWS. The preliminary engineering report must be approved by the department prior to award of financial assistance for construction.

[As added at: 22 IR 42.]

327 IAC 14-7-2 ----- Preliminary engineering report: applicability

This rule shall apply to any political subdivision requesting financial assistance from the drinking water SRF program.

[As added at: 22 IR 42.]

327 IAC 14-7-3 ----- Preliminary engineering report: project summary

The preliminary engineering report shall include a section that provides a brief summary of the proposed project, including the following:

- (1) Project purpose, scope and schedule.
- (2) Project cost estimates for construction and nonconstruction activities.
- (3) All anticipated funding sources for the project.
- (4) Legal description of the project area.
- (5) Current population data and twenty (20) year projection.
- (6) Current condition of facilities, current pollutant loadings and flows and twenty (20) year projection.
- (7) The preliminary design summary with schematics, layouts, and maps for the affected project and proposed PWS.
- (8) The department may request additional information from a political subdivision that it deems necessary to complete a preliminary engineering report.

[As added at: 22 IR 42.]

327 IAC 14-7-4 ----- Preliminary engineering report: development of feasible alternatives

The preliminary engineering report shall contain a section identifying a range of feasible alternatives with a description of all alternatives, including that of taking no action, that were evaluated during the planning process. The report shall include an evaluation of feasible alternatives and provide a rationale for the selection of the proposed alternative.

[As added at: 22 IR 43.]

327 IAC 14-7-5 ----- Preliminary engineering report: environmental information

The preliminary engineering report shall contain the following:

- (1) A comparison of the potential environmental impacts among feasible alternatives, including that of doing nothing.
- (2) A basis for a determination to prepare either an EA and FNSEI, issued pursuant to 327 IAC 13-9-5 and 327 IAC 13-9-6 or an EIS, issued under 327 IAC 13-9-7, as the final environmental document.
- (3) An assessment of the cumulative environmental impacts of the feasible alternatives within each of the following categories:
 - (A) Soils and prime farmland.
 - (B) Air quality.
 - (C) Ground water, drinking water, and sole source aquifers.
 - (D) Floodplains, wetlands, waterways, and other surface waters.
 - (E) Plants and animals.
 - (F) Historic, architectural, and archaeological sites.
 - (G) Natural national landmarks.
 - (H) Coastal zones.
- (4) The environmental information document shall include an evaluation of the environmental impacts of taking no action to modify, improve, or expand an existing PWS.
- (5) Specific mitigation measures shall be listed, as necessary, which shall eliminate, minimize, or compensate for the environmental impacts described in subdivision (3).
- (6) If the construction of an approved project is initiated five (5) or more years after the date of approval of a preliminary engineering report, an additional environmental information document shall be required unless it is determined by the de-

partment that there have been no substantial changes in the environmental impacts of the project.

- (7) If a proposed project is to be completed in several distinct phases, the environmental information associated with the first phase must consider the cumulative impacts of the entire proposed system, including all succeeding phases. As succeeding phases are constructed, no additional environmental information shall be required if there have been no significant changes to the original preliminary engineering report.
- (8) If a project is to be constructed in a political subdivision that had a preliminary engineering report for a previous project approved by the department, the environmental information submitted with the previous project shall be evaluated by the department to determine if its scope and content encompassed the environmental impacts associated with the current project. Based on this evaluation, the political subdivision shall only be required to submit additional information if the department deems it necessary to complete the environmental review for the current project.

[As added at: 22 IR 43.]

327 IAC 14-7-6 ----- Preliminary engineering report: public participation

The preliminary engineering report shall include the following:

- (1) Copies of all written comments submitted by the public during the preliminary engineering process.
- (2) A transcript of the public hearing.
- (3) A mailing list of all individuals, industries, groups, and organizations that have demonstrated an interest in receiving copies of the EA and FNSEI issued pursuant to 327 IAC 13-9-5 through 327 IAC 13-9-6.
- (4) A copy of the publisher's affidavit from the newspaper with the public hearing notice.

[As added at: 22 IR 43.]

327 IAC 14-7-7 ----- Preliminary engineering report: public hearings

At least one (1) public hearing shall be held prior to adoption of the preliminary engineering report by the political subdivision. The purpose of the public hearing shall be to discuss the preliminary engineering report. A copy of the preliminary engineering report shall be available to all attendees at the hearing. Requirements for the hearing shall include the following:

- (1) The public hearing shall be publicized in at least one (1) newspaper of general circulation in the study area a minimum of fourteen (14) days prior to the date of the hearing.
- (2) The preliminary engineering report shall be available for public review for a minimum of fourteen (14) days prior to the date of the public hearing.
- (3) Written comments shall be accepted during the hearing and for a period of ten (10) days following the hearing.
- (4) A sign up sheet shall be available for all individuals interested in receiving the EA and FNSEI at the public hearing.

[As added at: 22 IR 43.]

RULE 8. ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

327 IAC 14-8-1 ----- EIA: purpose

It is the purpose of this rule to accomplish the following:

- (1) To establish the environmental impact assessment procedures required for politi-

cal subdivisions seeking financial assistance for PWS construction projects from the drinking water SRF.

- (2) To assure that the environmental impacts of all projects funded by the drinking water SRF be evaluated adequately prior to award of financial assistance.
- (3) To assure that the consideration of public comments is an integral component of the environmental impact assessment process.

[As added at: 22 IR 44.]

327 IAC 14-8-2 ----- EIA: applicability

This rule applies to any political subdivision requesting financial assistance for PWS construction projects from the drinking water SRF program.

[As added at: 22 IR 44.]

327 IAC 14-8-3 ----- EIA: categorical exemptions

(a) The following classes of projects may be categorically exempt from the requirements of this rule, except as described in subsection (b):

- (1) Minor addition, rehabilitation, improvement, or expansion of any existing PWS that will disturb only previously disturbed land.
- (2) Rehabilitation of PWS that will not result in the extension of the existing system and will disturb only previously disturbed land.

(b) If it is determined by the department that the construction or operation, or both, of any PWS construction project listed in subsection (a) may result in substantive environmental impacts, a categorical exemption shall not be granted, and the political subdivision shall prepare a preliminary engineering report environmental information document under this rule.

(c) A categorical exemption may be rescinded by the department if it is determined that information exists sufficient to suggest that substantive environmental impacts may occur as a result of the construction or operation, or both, of any PWS construction project that received a categorical exemption.

(d) All decisions to categorically exempt a project from the requirements of this rule, or to rescind a previously granted categorical exemption, shall be issued for public comments for thirty (30) days. The decision shall be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the decision shall be reevaluated and a new decision, if appropriate, issued for public comments for thirty (30) days.

[As added at: 22 IR 44.]

327 IAC 14-8-4 ----- EIA: environmental assessment

(a) The purpose of an EA shall be the following:

- (1) To provide a description of all feasible PWS alternatives.
- (2) To document the potential environmental impacts of the feasible alternatives.
- (3) To act as a public record of the information evaluated by the department.
- (4) To provide information adequate for the public to evaluate the alternatives.

(b) The preparation of an EA shall be the responsibility of the department.

(c) The EA shall, at a minimum, include the following information:

- (1) Project identification.
- (2) System summary.
- (3) System need and purpose.
- (4) System description.
- (5) Project costs, affordability, and funding.
- (6) Evaluation of alternatives.

- (7) Environmental impacts of the feasible alternatives.
- (8) Mitigation measures.
- (9) Public participation.

(d) The EA shall be provided as an attachment to the FNSEI document issued under section 5 of this rule.

[As added at: 22 IR 44.]

327 IAC 14-8-5 ----- EIA: finding of no significant environmental impact

(a) The purpose of issuing an FNSEI shall be to notify the public that, based upon the department's evaluation of all pertinent information submitted in the environmental information section in the preliminary engineering report and information submitted by state and federal agencies, the construction and operation of PWS construction projects shall result in no significant adverse environmental impact.

(b) The FNSEI and attached EA shall be issued for public comments for thirty (30) days. If significant public comments are received during the public comment period, the FNSEI shall be reevaluated and a new FNSEI, if appropriate, issued for public comments for thirty (30) days.

(c) A final decision to proceed, or not to proceed, with the proposed project shall be issued by the department after all public comments have been evaluated.

[As added at: 22 IR 45.]

327 IAC 14-8-6 ----- EIA: environmental impact statement

(a) The purpose, content, and format of an EIS shall be established under 327 IAC 11-2-3(b)(1) through 327 IAC 11-2-3(b)(2).

(b) The criteria for initiating an EIS shall be established under 40 CFR 6.108.

(c) The preparation of an EIS shall be the responsibility of the department.

(d) A ROD shall be prepared by the department upon completion of an EIS that shall include a determination of whether to proceed with the proposed project. The ROD shall contain specific mitigation measures that shall minimize, eliminate, or compensate for the environmental impacts of the construction or operation, or both, of the proposed project. The ROD shall be issued for public comments for thirty (30) days, and shall be considered final in the absence of significant public comments. If significant public comments are received during the comment period, the ROD shall be reevaluated and a new ROD, if appropriate, shall be issued for public comments for thirty (30) days.

[As added at: 22 IR 45.]

RULE 9. WATER RATE ORDINANCE; INTERLOCAL AGREEMENT

327 IAC 14-9-1 ----- Ordinance/agreement: approval rate study water rate ordinance

(a) Every political subdivision shall obtain the agency's approval of its water system rates and charges as part of the due diligence process.

(b) Each political subdivision shall establish rates and charges at a level adequate to produce and maintain sufficient revenue to properly operate and maintain the treatment works and to repay all debt obligations of the treatment works.

[As added at: 22 IR 45.]

327 IAC 14-9-2 ----- Ordinance/agreement: interlocal agreement

If the project will serve two (2) or more political subdivisions, the political subdivision shall submit an interlocal service agreement, contract, or other legally binding instrument necessary for the financing, construction, operation, and maintenance of the proposed public water system project for approval by the agency. If the political subdivision is a multicounty infrastructure authority under IC 36-7-23, the agency may require similar documentation

and assurances.

[As added at: 22 IR 45.]

RULE 10. PROCUREMENT

327 IAC 14-10-1 ---- Procurement: professional services

Political subdivisions conducting procurement for the uses authorized by the drinking water SRF for professional services shall proceed pursuant to IC 5-16-11.1.

[As added at: 22 IR 45.]

327 IAC 14-10-2 ---- Procurement: other procurement

Political subdivisions conducting procurement for the uses authorized by the drinking water SRF for any activity other than professional services shall proceed pursuant to IC 36-1-12.

[As added at: 22 IR 45.]

327 IAC 14-10-3 ---- Procurement: small, minority, and women's business enterprises

The political subdivision shall take all necessary affirmative steps to assure that small, minority, and women's business enterprises are used when possible. Affirmative steps shall include taking the following actions:

- (1) Placing qualified enterprises on solicitation lists.
- (2) Assuring that these enterprises are solicited whenever they are potential sources.
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by these enterprises.
- (4) Establishing delivery schedules, where the requirement permits, that encourage participation by these enterprises.
- (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section.

[As added at: 22 IR 46.]

RULE 11. CONSTRUCTION

327 IAC 14-11-1 ---- Construction: construction permit

(a) The political subdivision must obtain a construction permit from the department in accordance with 327 IAC 8-3-2 in conjunction with the approved preliminary engineering report prior to contract award approval.

(b) The political subdivision must receive authorization from the department prior to initiating procurement for construction.

[As added at: 22 IR 46.]

327 IAC 14-11-2 ---- Construction: acquisition of land, easements, and existing facilities

The political subdivision is responsible for acquisition of land, easements, and any existing facilities necessary to construct, operate, and maintain the project. Prior to the issuance of a construction permit by the department, the political subdivision shall provide evidence that it has, or will have by a mutually agreeable date, the required property rights. All acquisitions of property by exercise of power of eminent domain shall comply with the procedure in IC 32-11 and Section 1452(a)(2) of the Safe Drinking Water Act.

[As added at: 22 IR 46.]

327 IAC 14-11-3 ---- Construction: bid tabulations

Certified bid tabulations and recommendations of award shall be submitted to the department for review and approval prior to construction contract award.

[As added at: 22 IR 46.]

327 IAC 14-11-4 ---- Construction: contract information submittal

Following the department's approval of the proposed award, each political subdivision shall provide copies of the following to the department:

- (1) Executed contracts.
- (2) Notices to contractors to proceed.
- (3) Bid bonds.
- (4) Performance and payment bonds.
- (5) Construction schedules.

[As added at: 22 IR 46.]

327 IAC 14-11-5 ---- Construction: construction wage rates

Wages paid for the construction of public water systems shall conform to the prevailing wage rates established for the political subdivision's locality by the U.S. Department of Labor under the Davis-Bacon Act, 40 U.S.C. 276a.

[As added at: 22 IR 46.]

327 IAC 14-11-6 ---- Construction: change orders

The political subdivision shall submit copies of each change order to the department. Change orders that:

- (1) significantly change the scope or design of the project; or
- (2) increase the amount of financing needed for the project;

require the prior approval of the department and agency before the work is authorized by the political subdivision. If the change order will result in the expenditure of more drinking water SRF funds than the current amount of financial assistance approved by the agency, an amendment increasing the amount of assistance must be executed prior to the implementation of the changes. Any additional financial assistance shall comply with existing law as to the borrowing power of the political subdivision.

[As added at: 22 IR 46.]

327 IAC 14-11-7 ---- Construction: inspections

The inspections shall proceed as follows:

- (1) During the construction of the project, the political subdivision shall provide continuous inspection by qualified inspectors in sufficient numbers to ensure that the construction complies with the department-issued construction permit and the terms and conditions of the contract.
- (2) The inspectors shall maintain logs, written in ink, with entries sufficient to establish the amount and quality of work completed by the contractor, including weather conditions and problems encountered.
- (3) The department shall conduct construction inspections to determine compliance with the department-issued construction permit and the financial assistance agreement. Inspections performed by the department are not made to replace the political subdivision's responsibility to properly monitor the construction of its project but are made solely to protect the department's and the agency's financial interest in the project.
- (4) The political subdivision, shall conduct a prefinal inspection making a punch list of incomplete and unacceptable work to be corrected before final inspection.
- (5) The political subdivision shall notify the department after the prefinal inspection

has been done and all punch list items have been corrected, or agreed to be corrected, to set up a final inspection to be made by the department to determine the date of substantial completion.

[As added at: 22 IR 47.]

327 IAC 14-11-8 ---- Construction: as-built plans

After completion of the project, the political subdivision shall obtain as-built plans for the project from its engineer and provide these to the department.

[As added at: 22 IR 47.]

RULE 12. DISBURSEMENT OF LOAN PROCEEDS

327 IAC 14-12-1 ---- Disbursement: process

The loan proceeds shall be disbursed as follows:

- (1) The department shall review and certify the drinking water SRF loan share of the appropriate costs incurred for the project. These costs shall be documented as requested by the department in the political subdivision's most recent invoice statement. The agency shall pay these costs in accordance with state disbursement procedures.
- (2) Multiple disbursements of the loan proceeds shall be made by the agency on the basis of incurred costs during the construction of the project with the first disbursement made at financial assistance closing. Succeeding disbursements shall normally be made monthly until construction completion or until all proceeds of the loan have been disbursed. Interest shall commence on the day funds are disbursed to the political subdivision for that disbursement only or to third parties on behalf of the political subdivision.
- (3) The political subdivision shall approve the project costs for payment prior to disbursement of the proceeds.
- (4) Loan proceeds disbursed to or on behalf of the political subdivision shall be used only for authorized purposes. Funds shall not be disbursed to pay costs associated with a contract change order that authorized a significant change in project scope or design, or both, prior to concurrence by the department and the agency.
- (5) The department and the agency may at any time review and audit requests for loan disbursements and make adjustments for circumstances including, but not limited to the following:
 - (A) Mathematical errors.
 - (B) Items not bought or built.
 - (C) Unacceptable construction.
- (6) By its acceptance of the final loan disbursement, the political subdivision releases and discharges the department, and agency, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the disbursement of loan proceeds, subject only to exceptions previously specified contractually in writing between the department and the political subdivision.
- (7) All files and records pertaining to the project shall be maintained by the political subdivision throughout the project and made accessible to the department and agency. These files and records shall be retained by the political subdivision for at least six (6) years after initiation of operation as determined by the department and agency. However, if any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the six (6) year period, the records shall be retained until completion of the action and resolution of all issues that arise from it or until the end of the regular six (6) year period, whichever is later.

[As added at: 22 IR 47.]

RULE 13. RESERVATION OF RIGHTS**327 IAC 14-13-1 ---- Reservation of rights: “rights” defined**

The following rights are reserved:

- (1) Nothing in this article prohibits a political subdivision from requiring more assurances, guarantees, or indemnity, or other contractual requirements from any party performing work on the project.
- (2) Nothing in this article affects the department’s and agency right under existing rules to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a political subdivision that fails to carry out its obligations under this article.
- (3) Review or approval of any document by or for the department does not relieve the political subdivision of its responsibility to properly plan, design, build, and effectively operate and maintain the PWS as required by federal and state statutes, rules, regulations, permits, and best management practice. The department is not responsible for increased costs resulting from defects in the plans, design drawings, specifications, inspections, construction, or other subagreement documents related to the project.

[As added at: 22 IR 47.]

RULE 14. RIGHTS OF REVIEW**327 IAC 14-14-1 ---- Rights of review: procedures**

A political subdivision whose financial assistance application is denied or disputes the terms contained in the financial assistance agreement, or whose preliminary engineering report or any provisions of its preliminary engineering report as defined in 327 IAC 13-8.1-3 is rejected may request a special review. The department and the agency shall conduct the review and make a determination. If further review is requested, the political subdivision may present its case to the department and agency. The department and the agency shall make a recommendation to the agency director, whose decision is final.

[As added at: 22 IR 48.]